

Supporting Document 3



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State Water Resources Control Board

Office of Statewide Initiatives

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Gray Davis
Governor

TO: 1) John Norton
Office of Statewide Initiatives

2) John H. Robertus
Executive Officer
San Diego Region

FROM: John R. Lemmons
General Auditor III
Economic and Effectiveness Unit

DATE: April 20, 2002

SUBJECT: Mr. and Mrs. Chung Kwan Hsu and Budget Trade & Gas, Inc.
Response to a Request for an Ability to Pay Analysis

Region 9 has requested our help in determining if Mr. & Mrs. Chung Kwan Hsu and their company (Budget Trade & Gas, Inc.) can pay an Administrative Civil Liability (ACL) (Order No. 2000-23 dated August 9, 2000) in the amount of \$35,680. The Region wants to know about the dischargers ability to pay, because it is considering a second ACL for an additional violation in the amount of \$146,500.

It was difficult to prepare an analysis from the materials submitted by the Hsu family, but my unannounced visit to Budget Gas & Trade station, on March 28, 2002, and a conversation with Mr. Hsu was most productive.

Documentation Submitted by the Hsu Family

In a file in the Underground Tank Cleanup Unit, I found a financial statement prepared by a Susan E. Schneider, CPA dated November 5, 1992, that showed the Budget Trade and Gas, Inc. in a healthy condition. Mr. Hsu told me that in 1992 he owned three gas stations but lost two of them because of his inability to cope with the contamination at the one he now has at 501 W. Fifth Avenue Escondido. (See Exhibit I –Financial Statements for 1992)

It was obvious that the CPA who prepared the corporate tax returns used the financial statements that were prepared by the tax payer because of the lack of professionalism in their preparation. I asked Mr. Hsu if he had prepared the corporate financial information. He responded with, "Yes,

with the help of my wife." I learned that the Secretary of State had suspended the corporate status of the Budget Trade & Gas Inc. in 1995, and the Franchise Tax Board suspended it in 1998.

Mr. Hsu submitted corporate for tax returns for the following years that show losses and earnings as follows:

Corporate Return	Personal Return--Adjusted Gross Income
1996 net loss (\$23,914)	
1997 net loss (\$33,868)	1997 loss (\$91,662)
1998 net profit \$12,388	1998 loss (\$43,007)
1999 net profit \$24,474	1999 loss (\$24,545)

(See Exhibit II --Summary of tax return information)

Because of the suspension, I didn't think I should rely very heavily on the tax returns. That left only the statements prepared by Susan E. Schneider in 1992—and that was too far into the past to rely on. That left me with making no decision or going on an unannounced visit to Budget Trade & Gas Inc.

Unannounced Visit

Before the visit I had I read two briefs for lawsuits against the Hsu family and their corporation. The first, was trying to foreclose on the station because it was in the arrears on a loan of more than \$100,000. This suit seems to have resulted in an extension of time because the lender obviously didn't want a contaminated station. The second lawsuit was his neighbor wanting payment because the contamination had entered his property. Mr. Hsu said he had to settle this suit for \$60,000. A motorcycle shop now occupies that property.

Mr. Hsu his difficulty in enunciating his English but I found that we had no significant difficulty in communicating. He said that all of his financial problems began with the underground contamination. He does an adequate job of maintaining daily report records of sales and purchases. He voluntarily showed me his daily reports of sales and purchases of gasoline. His sales are down to several hundred gallons per day and he cannot afford to purchase an entire load of gasoline at a time. This was obvious by looking at the delivery and invoice documents. His store is exceptionally small and mainly sells soft drinks and snack food. He said that both the gasoline and store sales are hardly enough to keep the station open and he can't sell the property because no one wants a contaminated station.

He said he and his wife are living in a small apartment several blocks from the station. He showed me some records that indicated that he sold his house to get \$30,000 to pay for the drilling of

John Norton
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holes for contamination testing. He seems to be physically and emotionally distraught, and said he was afraid to file bankruptcy for fear of not going to heaven "because debts have to be paid."

I asked Mr. Hsu if the contamination under his station is cleaned up. His response was, "No." I asked if he would be getting more money for the clean up. He said he didn't know. One of his immediate problems is trying to stave off the loss of his station for unpaid real property taxes.

I can only conclude that the Hsu family and what may be left of Budget Trade & Gas Inc. cannot afford to pay the existing ACL of \$35,680, nor the larger penalty under consideration. I think Hsu family will make a good faith effort to comply in the future.